IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 38 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH Sd/-
and
Hon'ble MR.JUSTICE D.A.MEHTA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

COMMISSIONER OF INCOME TAX

Versus

SCIENTIFIC CLOCK MFG.CO.

Appearance:

MR MH JOSHI FOR MR MANISH R BHATT for Applicant.

SERVED BY RPAD - (N) for Respondent No. 1

CORAM : MR.JUSTICE M.S.SHAH
and
MR.JUSTICE D.A.MEHTA

Date of decision: 04/10/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE D.A.MEHTA)

The Income Tax Appellate Tribunal , Ahmedabad Bench "C" has referred the following questions of law under Section 256(2) of the Income Tax Act,1961 (herein after referred to as 'the Act'), at the instance of the revenue :

(1) "Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in coming to the conclusion that the order passed by the Commissioner of Income-tax under section 263 of the Income-tax Act,1961 was liable to set aside ?"

(2) "Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in coming to the conclusion that the trustees of the Prakash Trust and Ansuman D & Angel D.Trust permit the use of the intangible assets for a consideration as distinguished from the intangible asset itself ?"

(3) "Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in coming to the conclusion that a share in the assets as distinguished from the asset could be given for user and consideration can be receivable for such use of share in the assets?"

2 It appears that the assessee paid rent for use of goodwill of two trusts who retired from the partnership firm i.e. the assessee. The C.I.T. invoked jurisdiction under section 263 of the Act and held that the deduction of such rent paid had been erroneously allowed by the assessing officer and the same was prejudicial to interest of revenue. On appeal by the assessee the Tribunal relied on its decision in the case of Morvi Time Company. Against the said decision revenue had come up in reference before this Court which was registered as Income Tax Reference No. 52 of 1984. The said reference has been decided by this Court on 4/11/1998.

3 We have heard Mr.M.H.Joshi, appearing for the revenue. Though served none appears for the respondent-assessee. This Court in case of Morvi Time Co., in an identical fact situation, has held that payment of rent for the use of such intangible assets, like goodwill, quota rights, selling agency rights etc. would be an allowable deduction. Following the aforesaid decision we hold that the Tribunal was justified in law in holding that the amount paid for use of goodwill could

not be disallowed and the order passed by the Commissioner under section 263 of the Act was rightly set aside. All the three questions referred to us are therefore answered in the affirmative i.e. in favour of the assessee and against the revenue.

4 The reference stands disposed of accordingly with no order as to costs.

Sd/- Sd/-

(M.S.Shah,J) (D.A.Mehta,J)

m.m.bhatt